

103D CONGRESS
1ST SESSION

S. 948

To amend the Internal Revenue Code of 1986 to provide special rules for certain gratuitous transfers of employer securities for the benefit of employees.

IN THE SENATE OF THE UNITED STATES

MAY 13 (legislative day, APRIL 19), 1993

Mr. DASCHLE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide special rules for certain gratuitous transfers of employer securities for the benefit of employees.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. GRATUITOUS TRANSFERS FOR THE BENEFIT**
4 **OF EMPLOYEES.**

5 (a) IN GENERAL.—Subparagraph (C) of section
6 664(d)(1) of the Internal Revenue Code of 1986 and sub-
7 paragraph (C) of section 664(d)(2) of such Code are each
8 amended by striking the period at the end thereof and in-
9 serting “or, to the extent the remainder interest is in
10 qualified employer securities (as defined in paragraph

1 (3)(C)), is to be transferred to an employee stock owner-
 2 ship plan (as defined in section 4975(e)(7)) in a qualified
 3 gratuitous transfer (as defined in paragraph (3)).”.

4 (b) QUALIFIED GRATUITOUS TRANSFER DEFINED.—
 5 Subsection (d) of section 664 of such Code is amended
 6 by redesignating paragraph (3) as paragraph (4) and by
 7 inserting after paragraph (2) the following new paragraph:

8 “(3) QUALIFIED GRATUITOUS TRANSFER OF
 9 QUALIFIED EMPLOYER SECURITIES.—

10 “(A) IN GENERAL.—For purposes of this
 11 section, the term ‘qualified gratuitous transfer’
 12 means a transfer of qualified employer securi-
 13 ties to an employee stock ownership plan (as
 14 defined in section 4975(e)(7)) but only to the
 15 extent that—

16 “(i) the securities transferred pre-
 17 viously passed from a decedent to a trust
 18 described in paragraph (1) or (2);

19 “(ii) no deduction under section 404
 20 is allowable with respect to such transfer;

21 “(iii) such plan provides that the se-
 22 curities so transferred are allocated to plan
 23 participants in a manner consistent with
 24 section 401(a)(4);

1 “(iv) such plan treats such securities
2 as being attributable to employer contribu-
3 tions but without regard to the limitations
4 otherwise applicable to such contributions
5 under section 404;

6 “(v) such plan provides that such se-
7 curities are held in a suspense account
8 under the plan to be allocated each year,
9 up to the limitations under section 415(c),
10 after first allocating all other annual addi-
11 tions for the limitation year, up to the lim-
12 itations under sections 415(c) and (e);

13 “(vi) such plan provides that no por-
14 tion of the assets of the plan attributable
15 to securities acquired by the plan in such
16 transfer may at any time accrue for the
17 benefit of any person who is related to the
18 decedent (within the meaning of section
19 267(b)) or any person who owns (after ap-
20 plication of section 318(a)) more than 5
21 percent of—

22 “(I) any class of outstanding
23 stock of the corporation which issued
24 such qualified employer securities or
25 of any corporation which is a member

1 of the same controlled group of cor-
2 porations (within the meaning of sec-
3 tion 409(l)(4)) as such corporation, or

4 “(II) the total value of any class
5 of outstanding stock of any such cor-
6 poration; and

7 “(vii) the employer whose employees
8 are covered by the plan described in this
9 subparagraph files with the Secretary a
10 verified written statement consenting to
11 the application of sections 4978 and
12 4979A with respect to such employer.

13 For purposes of clause (vi), section 318(a) shall
14 be applied without regard to the exception in
15 paragraph (2)(B)(i) thereof.

16 “(B) 5-PERCENT SHAREHOLDERS.—A per-
17 son shall be treated as failing to meet the more
18 than 5 percent ownership limitation of subpara-
19 graph (A)(vi) if such person fails such limita-
20 tion—

21 “(i) at any time during the 1-year pe-
22 riod ending on the date of the acquisition
23 of qualified employer securities by the
24 plan, or

1 “(ii) on any date as of which qualified
2 employer securities are allocated to partici-
3 pants in the plan.

4 “(C) QUALIFIED EMPLOYER SECURI-
5 TIES.—For purposes of this section, the term
6 ‘qualified employer securities’ means employer
7 securities (as defined in section 409(l)) which
8 are issued by a domestic corporation which has
9 no outstanding stock which is readily tradable
10 on an established securities market.

11 “(D) FAILURE TO MEET REQUIRE-
12 MENTS.—If a plan fails to meet the require-
13 ments of subparagraph (A)(vi)—

14 “(i) the plan shall be treated as hav-
15 ing distributed to the person described in
16 subparagraph (A)(vi) the amount allocated
17 to the account of such person in violation
18 of subparagraph (A)(vi) at the time of
19 such allocation,

20 “(ii) the provisions of section 4979A
21 shall apply, and

22 “(iii) the statutory period for the as-
23 sessment of any tax imposed by section
24 4979A shall not expire before the date
25 which is 3 years from the later of—

1 “(I) the 1st allocation of em-
2 ployer securities in connection with a
3 qualified gratuitous transfer to which
4 this section applies, or

5 “(II) the date on which the Sec-
6 retary is notified of such failure.”.

7 (c) CONFORMING AMENDMENTS.—

8 (1) Section 415(e) of such Code is amended—

9 (A) by redesignating paragraph (6) as
10 paragraph (7), and

11 (B) by inserting after paragraph (5) the
12 following new paragraph:

13 “(6) SPECIAL RULE FOR QUALIFIED GRATU-
14 ITOUS TRANSFERS.—Any qualified gratuitous trans-
15 fer of qualified employer securities (as defined in
16 section 664(d)(3)) shall not be taken into account in
17 calculating, and shall not be subject to, the limita-
18 tions provided in this subsection.”.

19 (2) Section 415(c)(6) of such Code is amended
20 by adding at the end thereof the following new
21 sentence:

22 “The amount of any qualified gratuitous transfer
23 (as defined in section 664(d)(3)(A)) allocated to a
24 participant for any limitation year shall not exceed
25 the limitations imposed by this section, but such

1 amount shall not be taken into account in determin-
2 ing whether any other amount exceeds the limita-
3 tions imposed by this section.”.

4 (3) Section 4979A(b) of such Code is amended
5 by striking “and” at the end of paragraph (1), by
6 redesignating paragraph (2) as paragraph (3), and
7 by inserting after paragraph (1) the following new
8 paragraph:

9 “(2) any allocation of qualified employer securi-
10 ties acquired by an employee stock ownership plan
11 pursuant to a qualified gratuitous transfer, as de-
12 scribed in section 664(d)(3), which fails to meet the
13 requirements of section 664(d)(3)(A)(vi), and”.

14 (4) Section 664(d) of such Code, as amended
15 by subsection (b), is amended by adding at the end
16 thereof the following new paragraph:

17 “(5) Notwithstanding subsections (d)(1)(B) and
18 (d)(2)(B), a qualified gratuitous transfer of qualified
19 employer securities to an employee stock ownership
20 plan shall be permitted.”.

21 (5) Section 2055(a) of such Code is amended—

22 (A) by striking “or” at the end of para-
23 graph (3),

24 (B) by striking the period at the end of
25 paragraph (4) and inserting “; or”, and

1 (C) by inserting after paragraph (4) the
2 following new paragraph:

3 “(5) to an employee stock ownership plan if
4 such transfer qualifies as a qualified gratuitous
5 transfer of qualified employer securities within the
6 meaning of section 664(d)(3).”.

7 (6) Section 4947(b) of such Code is amended
8 by adding at the end the following new paragraph:

9 “(4) SECTION 507.—The provisions of section
10 507(a) shall not apply to a trust which is described
11 in subsection (a)(2) by reason of a distribution of
12 qualified employer securities (as defined in section
13 664(d)(3)(C)) to an employee stock ownership plan
14 (as defined in section 4975(e)(7)) in a qualified gra-
15 tuitous transfer (as defined in section 664(d)(3)).”.

16 (7) Section 404(a)(9) of such Code is amended
17 by adding at the end the following new subpara-
18 graph:

19 “(C) A qualified gratuitous transfer (as de-
20 fined in section 664(d)(3)(A)) shall have no ef-
21 fect on the amount or amounts otherwise de-
22 ductible under paragraph (3) or (7) or under
23 this paragraph.”.

24 (8) Paragraph (3) of section 644(e) of such
25 Code is amended to read as follows:

1 “(3) acquired by a charitable remainder annuity
2 trust (as defined in section 664(d)(1)) or a chari-
3 table remainder unitrust (as defined in sections
4 664(d)(2) and (4)), or”.

5 (9) Paragraph (4) of section 674(b) of such
6 Code is amended to read as follows:

7 “(4) POWER TO ALLOCATE AMONG CHARITABLE
8 BENEFICIARIES.—A power to determine the bene-
9 ficial enjoyment of the corpus or the income there-
10 from if the corpus or income is irrevocably payable
11 for a purpose specified in section 170(c) (relating to
12 definition of charitable contributions) or to an em-
13 ployee stock ownership plan (as defined in section
14 4975(e)(7)) in a qualified gratuitous transfer (as de-
15 fined in section 664(d)(3)).”.

16 (10) Paragraph (8) of section 2056(b) of such
17 Code is amended to read as follows:

18 “(8) SPECIAL RULE FOR CHARITABLE REMAIN-
19 DER TRUSTS.—

20 “(A) IN GENERAL.—If the surviving
21 spouse of the decedent is the only noncharitable
22 or nonqualified ESOP beneficiary of a qualified
23 charitable remainder trust, paragraph (1) shall
24 not apply to any interest in such trust which

1 passes or has passed from the decedent to such
2 surviving spouse.

3 “(B) DEFINITIONS.—For purposes of sub-
4 paragraph (A)—

5 “(i) NONCHARITABLE BENE-
6 FICIARY.—The term ‘noncharitable bene-
7 ficiary’ means any beneficiary of the quali-
8 fied charitable remainder trust other than
9 an organization described in section
10 170(c).

11 “(ii) NONQUALIFIED ESOP BENE-
12 FICIARY.—The term ‘nonqualified ESOP
13 beneficiary’ means any beneficiary of the
14 qualified charitable remainder trust other
15 than an employee stock ownership plan (as
16 defined in section 4975(e)(7)) that holds a
17 remainder interest in qualified employer
18 securities (as defined in section
19 664(d)(3)(C)) to be transferred to such
20 plan in a qualified gratuitous transfer (as
21 defined in section 664(d)(3)).

22 “(iii) QUALIFIED CHARITABLE RE-
23 MAINDER TRUST.—The term ‘qualified
24 charitable remainder trust’ means a chari-
25 table remainder annuity trust or a chari-

1 table remainder unitrust (described in sec-
2 tion 664).”.

3 (11) Paragraph (7) of section 4975(e) of such
4 Code is amended to read as follows:

5 “(7) EMPLOYEE STOCK OWNERSHIP PLAN.—
6 The term ‘employee stock ownership plan’ means a
7 defined contribution plan—

8 “(A) which is a stock bonus plan which is
9 qualified, or a stock bonus and a money pur-
10 chase plan both of which are qualified under
11 section 401(a) and which are designed to invest
12 primarily in qualifying employer securities; and

13 “(B) which is otherwise defined in regula-
14 tions prescribed by the Secretary.

15 A plan shall not be treated as an employee stock
16 ownership plan unless it meets the requirements of
17 section 409(h), section 409(o), and, if applicable,
18 section 409(n) and section 664(d)(3), and, if the em-
19 ployer has a registration-type class of securities (as
20 defined in section 409(e)(4)), it meets the require-
21 ments of section 409(e).”.

22 (12) Subsection (a) of section 4978 of such
23 Code is amended to read as follows:

24 “(a) TAX ON DISPOSITIONS OF SECURITIES TO
25 WHICH SECTION 664(d)(3) OR SECTION 1042 APPLIES

1 BEFORE CLOSE OF MINIMUM HOLDING PERIOD.—If,
 2 during the 3-year period after the date on which the em-
 3 ployee stock ownership plan or eligible worker-owned coop-
 4 erative acquired any qualified securities in a sale to which
 5 section 1042 applied or in a qualified gratuitous transfer
 6 to which section 664(d)(3) applied, such plan or coopera-
 7 tive disposes of any qualified securities and—

8 “(1) the total number of shares held by such
 9 plan or cooperative after such disposition is less
 10 than the total number of employer securities held
 11 immediately after such sale or such qualified gratu-
 12 itous transfer, or

13 “(2) except to the extent provided in regula-
 14 tions, the value of qualified securities held by such
 15 plan or cooperative after such disposition is less
 16 than 30 percent of the total value of all employer se-
 17 curities as of such disposition,

18 there is hereby imposed a tax on the disposition equal to
 19 the amount determined under subsection (b).”.

20 (13) Paragraph (2) of section 4978(b) of such
 21 Code is amended to read as follows:

22 “(2) LIMITATION.—The amount realized taken
 23 into account under paragraph (1) shall not exceed
 24 that portion allocable to qualified securities acquired
 25 in the sale to which section 1042 applied or in the

1 qualified gratuitous transfer to which section
2 664(d)(3) applied determined as if such securities
3 were disposed of—

4 “(A) first, from section 133 securities (as
5 defined in section 4978B(e)(2)) acquired during
6 the 3-year period ending on the date of such
7 disposition, beginning with the securities first
8 so acquired,

9 “(B) second, from section 133 securities
10 (as so defined) acquired before such 3-year pe-
11 riod unless such securities (or proceeds from
12 the disposition) have been allocated to accounts
13 of participants or beneficiaries,

14 “(C) third, from qualified securities to
15 which section 1042 applied or to which section
16 664(d)(3) applied during the 3-year period end-
17 ing on the date of such disposition, beginning
18 with the securities first so acquired, and

19 “(D) then, from any other employer securi-
20 ties.

21 If subsection (d) or section 4978B(d) applies to a
22 disposition, the disposition shall be treated as made
23 from employer securities in the opposite order of the
24 preceding sentence.”.

1 (14) Subsection (c) of section 4978 of such
2 Code is amended to read as follows:

3 “(c) LIABILITY FOR PAYMENT OF TAXES.—The tax
4 imposed by this section shall be paid by—

5 “(1) the employer, or

6 “(2) the eligible worker-owned cooperative,
7 that made the written statement described in section
8 664(d)(3) or in section 1042(b)(3).”.

9 (d) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to transfers made by trusts to, or
11 for the use of, an employee stock ownership plan after the
12 date of the enactment of this Act.

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